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Joseph J. Laks			EXAMINER	
Thomson Licensing LLC			CHEVALIER, ROBERT	
2 Independence Way, Patent Operations				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/521,308

Applicant(s)

COMER ET AL.

Examiner

ROBERT CHEVALIER

Art Unit

2621

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/29/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-19 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-19, 21 is/are rejected.
- 7) ☒ Claim(s) 22 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-9, 11-19, and 21, have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 4-7, 9, 11-12, and 19, 21, are rejected under 35 U.S.C. 103(a) as being unpatentable over McMahon (P.N. 7,020,195) in view of Schoner et al (P.N. 6,493,506).

McMahon discloses a video recording apparatus that shows substantially the same limitations recited in claims 1, and 12, including the feature of using a first stream identification, encoding a base layer comprising base data representing a first version of

a digital recording (See McMahon's Figure 5, and column 7, lines 44-51, and claim 17), and the feature of the second stream identification, encoding an enhancement layer which can be combined with the base data to represent a second version of the digital recording as specified in the present claims 1, and 12. (See McMahon's Figure 5, and column 7, lines 44-51, and claim 17).

Although McMahon discloses the capability of storing the base data and the enhancement data on a storage medium (See McMahon's claim 17), it is noted that McMahon fails to specifically disclose the feature of the storage medium being a single side storage medium as specified in the present claims 1, and 12.

Schoner et al does disclose a recording apparatus which shows a single side DVD storage medium for the purpose of recording video data/audio data thereon as claimed in the present claims 1, and 12. (See Schoner et al's column 1, lines 24-35).

It would have been obvious to one skilled in the art to modify the McMahon's apparatus wherein the recording medium provided thereof would be replaced by a single side DVD storage medium for the purpose of recording the provided stream data thereon in the same conventional manner as shown by Schoner et al. The motivation is to make easier to access the recorded data from the recording medium during reproduction operation as suggested by Schoner et al.

With regard to claims 4-5, and 15-16, the feature of multiplexing the base layer and the enhancement layer as specified thereof is present in McMahon. (See McMahon's claim 12).

With regard to claims 6, and 21, the feature of storing the base layer and the enhancement layer on different physical layers of a storage medium as specified thereof is present in **McMahon**. (See **McMahon's** claim 18).

With regard to claims 7, and 17, the feature of encoding the base layer comprises coding the based data in a format substantially similar to MPEG-2 as specified thereof is present in **McMahon**. (See **McMahon's** column 6, lines 5-6).

With regard to claims 9, and 19, the feature of the second version of the digital recording comprising high definition program content as specified thereof is present in **McMahon**. (See **McMahon's** claim 20).

With regard to claim 11, the feature of the storage medium being a DVD as specified thereof is present in **McMahon**. (See **McMahon's** column 7, lines 66-67).

5. Claims 2-3, and 13-14, are rejected under 35 U.S.C. 103(a) as being unpatentable over **McMahon** and **Schoner et al** as applied to claims 1, 4-7, 9, 11-12, and 19, 21 above, and further in view of **Kikuchi et al** (P.N. 2003/0147629).

The proposed combination of **McMahon** and **Schoner et al** indicated above discloses a video recording apparatus that shows substantially the same limitations recited in claims 2-3, and 13-14, including the feature of the stream identification recited in the present claims 2-3, and 13-14. (See **McMahon's** column 7, lines 44-51).

The proposed combination fails to specifically disclose the feature of the stream identification as 0XE0 as specified in the present claims 2-3, and 13-14.

Kikuchi et al discloses a video recording apparatus which includes the capability of identify streams of information using 0XE0 as specified in the present claims 2-3, and 13-14. (See Kikuchi et al's page 10, paragraph [0234]).

It would have been obvious to one skilled in the art to modify the proposed combination of McMahon and Schoner et al indicated above wherein the identification provided to the stream of data provided thereof would be identification as 0XE0 for the purpose of identifying the stream of data in the same conventional as is shown by Kikuchi et al. The motivation is to accurately identify the stream of data as suggested by Kikuchi et al.

6. Claims 8, and 18, are rejected under 35 U.S.C. 103(a) as being unpatentable over McMahon and Schoner et al as applied to claims 1, 4-7, 9, 11-12, and 19, 21 above, and further in view of Sun (P.N. 2006/0126962).

The proposed combination of McMahon and Schoner et al indicated above discloses a video recording apparatus that shows substantially the same limitations recited in claims 8, and 18, including the feature of encoding enhancement data before recording the same on the recording medium as specified in the present claims 8, and 18. (See McMahon's Figure 5).

The proposed combination of McMahon and Schoner et al indicated above fails to specifically disclose the feature of encoding the enhancement layer in a format substantially similar to at least one format selected from the group consisting of H.264. as specified in the present claims 8, and 18.

Sun shows a video encoding apparatus which includes the capability of compressing inputted video data using video compression standards such as H.264. as specified in the present claims 8, and 18. (See Sun's page 1, paragraph [0005]).

It would have been obvious to one skilled in the art to modify the proposed combination of McMahon and Schoner et al indicated above wherein the compressing means provided thereof (See McMahon's Figure 5, component 156) would incorporate the capability of compressing inputted video data using video compression standards such as H.264. in the same conventional manner as is shown by Sun. The motivation is to increase the quality of the compressed video data as suggested by Sun.

Allowable Subject Matter

7. Claims 22-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT CHEVALIER whose telephone number is (571)272-7374. The examiner can normally be reached on MM-F (9:00-6:30), second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on 571-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ROBERT CHEVALIER/

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Primary Examiner, Art Unit 2621
November 14, 2008.